

**ALFRED F. JAHNS**

**Attorney At Law**

RECEIVED  
SACRAMENTO  
CVRWQCB

09 AUG 19 PM 12:50

August 18, 2009

Kenneth Landau  
Assistant Executive Officer  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

Re: Draft Cleanup and Abatement Order – Central, Cherry Hill, Empire,  
Manzanita, and West End Mines, Colusa County –  
Rebuttal to Submittal dated June 19, 2009 on behalf of Dr. Richard Miller

Dear Mr. Landau:

I represent American Land Conservancy (“ALC”) in connection with the subject Draft Cleanup and Abatement Order (the “**Draft Order**”). On behalf of ALC I provide this rebuttal to the letter submitted by David W. Alden, dated June 19, 2009, on behalf Dr. Richard Miller (the “**Miller Letter**”). ALC’s rebuttal is submitted in accordance with the schedule set forth in the Revised Hearing Procedures issued in this matter on August 4, 2009.

The Miller Letter mischaracterizes the transactions by which Dr. Miller acquired fee title to property embracing the subject mine sites and the nature of the encumbrance created by Dr. Miller’s voluntary conveyance of a conservation easement interest in that property to ALC.<sup>1</sup> Dr. Miller’s reserved ownership rights and obligations with respect to the property under the Conservation Easement are ignored, and ALC’s limited rights with respect to the property are distorted. ALC is surprised and disappointed that a conservation partner would engage in such an unjustifiable effort to transfer the burdens of fee ownership to ALC.<sup>2</sup>

ALC respectfully submits that: (i) Dr. Miller voluntarily conveyed the Conservation Easement to ALC; (ii) the Conservation Easement does not restrict Dr. Miller’s reserved interests as fee owner in any way that interferes with his status as a “discharger” under the Draft Order; and (iii) the Conservation Easement provides no legal basis for naming ALC as a “discharger” under Cal. Water Code section 13304(a). In the remainder of this letter, ALC sets forth the details of its rebuttal to the Miller Letter.

---

<sup>1</sup> Grant of Easement for Conservation Purposes dated October 27, 1999, and recorded in the Official Records of Colusa County, California on December 3, 1999, with Recorder’s Serial No. 99-005189 (the “**Conservation Easement**”). A copy of the recorded form of the Conservation Easement is provided as Attachment 1 to this letter.

<sup>2</sup> Dr. Miller was represented by legal counsel in the transactions resulting in the conveyance of the Conservation Easement to ALC.

**1. Miller voluntarily granted the Conservation Easement to ALC.**

The Miller Letter suggests that the Conservation Easement was conveyed “prior to Dr. Miller’s taking title.” This is not the case. As is shown on the face of the Conservation Easement, the grant was made by Dr. Miller as the fee owner of the encumbered property. Dr. Miller voluntarily agreed to convey the Conservation Easement to ALC in connection with his purchase of the encumbered property, in back-to-back transactions. The restrictions on his property that Dr. Miller voluntarily imposed did not come without economic benefit to him, contrary to the suggestion in the Miller Letter. The Conservation Easement is a continuing “enforceable restriction” for the purposes of determining the value of the encumbered property for property tax assessments.<sup>3</sup>

**2. The Conservation Easement does not preclude Miller from complying with the Draft Order.**

The assertion in the Miller Letter that “the scope of the Conservation Easement does in fact preclude Dr. Miller from undertaking activities as requested in the Draft Order” is squarely at odds with the plain language of the Conservation Easement.

Section 3 of the Conservation Easement expresses that “Grantor [Miller] understands and acknowledges that nothing contained in this Grant relieves Grantor [Miller] of any obligation or restriction on the use of the Property imposed by law.”

Section 4 of the Conservation Easement expressly reserves to Grantor [Miller] “all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited [in the Conservation Easement] and do not materially impair or interfere with the conservation purpose of [the Conservation Easement].”

Section 13 of the Conservation Easement provides that “Grantor [Miller] retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property” and that “Grantee [ALC] shall have no obligation for the upkeep or maintenance of the Property, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property.” Section 13 further provides that:

(b) Notwithstanding any other provision of this Grant to the contrary, the parties do not intend and this Agreement shall not be construed such that (i) it creates in Grantee the obligations or liabilities of an “owner” or “operator”, as

---

<sup>3</sup> See Cal. Civ. Code § 815.10.

those words are defined and used in any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.) (collectively, "Environmental Laws"), or (ii) it creates in Grantee the obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3), or (iii) Grantee has the obligation to investigate or remediate any Hazardous Materials (as defined below) associated with the Property, or (iv) Grantee has any control over Grantor's ability to investigate and remediate any Hazardous Materials associated with the Property. Grantor represents, warrants and covenants to Grantee that Grantor's use of the Property shall comply with all Environmental Laws. For purposes of this Grant, the term "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in any Environmental Law.<sup>4</sup>

Moreover, there is no provision in the "Prohibited Uses and Practices" set forth in Exhibit B to the Conservation Easement that precludes Dr. Miller from complying with the obligations of a "discharger" under the Draft Order. His taking or authorizing actions to remediate existing conditions of contamination on the property cannot credibly be asserted to be inconsistent with the Conservation Easement purpose "to protect and preserve the conservation values of the Property, including without limitation, the integrity of the riparian corridor located on the Property, and to prevent any uses of the Property that would materially impair or interfere with those conservation values." (Conservation Easement, Section 1.)

The smokescreen spewed by the Miller Letter should be ignored. No provision of the Conservation Easement restricts the legal ability of Miller to undertake remedial action as a "discharger" under the Draft Order.

---

<sup>4</sup> These provisions are comparable to provisions included in Section 14(i) of the Conservation Easement Deed template currently utilized by the California Department of Fish and Game in connection with the creation of conservation and mitigation banks in California (published at the following link: <http://www.dfg.ca.gov/habcon/conplan/mitbank/>). An interpretation that ignores such a provision would clearly be contrary state policy and potentially would expose the State of California to unintended liabilities under the conservation easements that it holds.

**3. The Conservation Easement provides no legal basis for naming ALC as a “discharger” under Cal. Water Code section 13304(a).**

The provisions of the Draft Order do not indicate that ALC’s identification as a “discharger” is based on the Conservation Easement.<sup>5</sup> The effort in the Miller Letter to transpose the obligations of landowner and easement holder under the Conservation Easement should be rejected.

ALC’s affirmative rights to enforce the restrictions set forth in the Conservation Easement to protect the identified conservation values do not change the balance of responsibilities between Miller and ALC; nor do ALC’s limited rights to conduct certain restoration activities, which rights must be considered in the light of the provisions of Section 13(b) of the Conservation Easement, quoted above. Those limited restoration rights allow, but do not obligate, ALC to undertake, at its own expense, certain actions to promote the purpose of the Conservation Easement. ALC has in fact previously invoked those rights in support of the purpose of the Conservation Easement.<sup>6</sup> ALC, however, is in no way obligated to invoke those rights to assume liability for conditions on the encumbered property contrary to the plain terms of Section 13(b) of the Conservation Easement.

A re-mixing by the Regional Board of the obligations of landowner and easement holder, such as the Miller Letter unjustifiably requests, would amount to adoption of an enforcement policy that would subject scores of non-profit land trusts,<sup>7</sup> as well as the State of California,<sup>8</sup> to potential liability never intended under the conservation easement instruments they hold. This would, in turn, severely frustrate the land conservation

---

<sup>5</sup> ALC will demonstrate in its forthcoming Evidence and Policy Statement that its mere 4-month fee ownership of property encompassing the “West End Mine” -- in the context of structuring a conservation transaction -- does not justify “discharger” status under applicable decision precedent of the State Water Resources Control Board.

<sup>6</sup> ALC’s only exercise of these rights to date has been to undertake a riparian habitat restoration project along Sulphur Creek, supported by grant funding from the Wildlife Conservation Board (Grant Agreement No. WC-2016BT), involving the removal of tamarisk and restoration of selected native grasses and forbs. A copy of Grant Agreement No. WC-2016BT is provided as Attachment 2 to this letter.

<sup>7</sup> The California Council of Land Trusts, the pre-eminent organization for land trusts in California, claims more than 150 members. <http://www.calandtrusts.org/>.

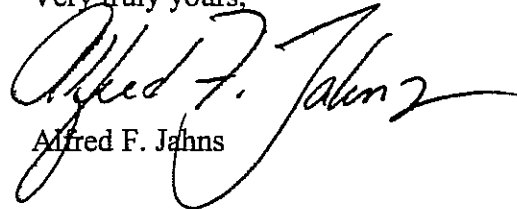
<sup>8</sup> A perusal of the Conservation Easements Registry maintained by the Natural Resources Agency (<https://easements.resources.ca.gov/search.php>) will quickly reveal the magnitude of the State’s exposure to potential liability under such an enforcement policy.

Mr. Kenneth Landau  
August 18, 2009  
Page 5 of 5

policies and goals promoted by the Conservation Easements Act and similar legislation that authorize and encourage the granting of easements in gross to protect conservation values.<sup>9</sup>

The grossly distorted characterization of the Conservation Easement presented in the Miller Letter should be rejected.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Alfred F. Jahns", written in black ink. The signature is fluid and stylized, with a long horizontal stroke at the end.

Alfred F. Jahns

cc: Lori Okun, Senior Staff Counsel  
State Water Resources Control Board, Office of Chief Counsel

---

<sup>9</sup> Cal. Civ. Code § 815 *et seq.*; Open-Space Easement Act of 1974, Cal. Gov. Code sections 51070 – 51097; California Farmland Conservancy Program Act, Cal. Pub. Res. Code §§ 10200 - 10277.

# **ATTACHMENT 1**

93 005189

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

American Land Conservancy  
456 Montgomery Street, Suite 1450  
San Francisco, California 94104  
Attention: Harriet Burgess.

RECORDED AT REQUEST OF

Western Title Colusa County

40 min. past 3 p.m.  
Official Records Colusa County, CA  
DEC - 3 1999

KATHLEEN MORAN - COUNTY RECORDER

No. of Pages 26 Fee \$ 82.00

Space Above This Line for Recorder's Use

### GRANT OF EASEMENT FOR CONSERVATION PURPOSES

This GRANT OF EASEMENT FOR CONSERVATION PURPOSES (the "Grant") is made this October 27, 1999, by and between AMERICAN LAND CONSERVANCY, a California nonprofit public benefit corporation ("Grantee"), and DR. RICHARD LOUIS MILLER ("Grantor").

#### RECITALS

A. Grantor is the sole owner in fee simple of approximately one thousand five hundred thirty-one (1531) acres of unimproved real property located in Colusa County, California, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Property").

B. The Property contains significant riparian resources and provides natural habitat for native wildlife, wildflowers, oak woodlands and other plants and possesses natural, scenic, open space, historical, educational and recreational values (collectively, the "conservation values") of great importance to Grantee, the people of Colusa County and the State of California.

C. Grantor and Grantee recognize the recreational, scenic, aesthetic and unique character of the region in which the Property is located, and have the common purpose to preserve, protect and enhance the conservation values of the Property in perpetuity and to prevent the development of the Property for any purpose or in any manner that would conflict with the maintenance of the Property in its existing condition as an environmentally significant area.

D. Grantee is a publicly supported, tax-exempt nonprofit organization, qualified under Sections 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended (the "Code"), whose primary purpose is the preservation, protection and enhancement of land in its natural, scenic, historical, forested and/or open space condition.

E. Grantee agrees by accepting this Grant to honor the intentions of Grantor as set forth in this Grant to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein and for good and valuable consideration, the receipt

and sufficiency of which are hereby acknowledged, and pursuant to the laws of the State of California, Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby accepts, a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. **Purpose.** The purpose of the Easement is to protect and preserve the conservation values of the Property, including without limitation, the integrity of the riparian corridor located on the Property, and to prevent any uses of the Property that would materially impair or interfere with those conservation values, including, without limitation, future development or improvement of the Property, except to the extent such development or improvement of the Property and uses of the Property are permitted under this Grant. This purpose, as further defined by the provisions of this Grant, is generally referred to herein as "the conservation purpose of this Easement." Grantor intends that this Easement will confine the use of the Property to such activities that are consistent with the conservation purpose of this Easement.

2. **Rights of Grantee.** To accomplish the conservation purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

(a) To identify, preserve and protect in perpetuity the conservation values of the Property.

(b) To enter upon the Property, at reasonable times, upon reasonable prior notice and in a manner that does not unreasonably interfere with the use of the Property being made by Grantor, or any lessee, permittee or licensee of Grantor, in order to inspect, observe and study the Property for the purposes of (i) identifying the current uses and practices of the Property, (ii) monitoring the uses and practices of the Property to determine whether they are consistent with this Grant, (iii) at the sole discretion of Grantee, conducting certain restoration activities on the Property, including without limitation, revegetation of banks, restoration of the riparian corridor, repair of erosion sites, eradication of noxious weeds and fisheries enhancement projects, and (iv) enforcing the rights granted herein. The rights of entry provided by this Section 2(b) shall extend to the employees, agents and consultants of Grantee, and shall be conducted in a manner that will minimize any interference with Grantor's use and operation of the Property.

(c) To prevent any activity on or use of the Property that is inconsistent with the conservation purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any such inconsistent activity or use.

3. **Prohibited Uses.** Any activity on or use of the Property that is inconsistent with the conservation purpose of this Easement is prohibited. Without limiting the foregoing, the activities and uses of the Property set forth in Exhibit B attached hereto and incorporated herein by reference are expressly deemed to be inconsistent with the conservation purpose of this Easement and are prohibited. Grantor understands and acknowledges that nothing contained in this Grant relieves Grantor of any obligation or restriction on the use of the Property imposed by law.



4. **Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and do not materially impair or interfere with the conservation purpose of this Easement. Without limiting the foregoing, the uses of the Property set forth in Exhibit C attached hereto and incorporated herein by reference are expressly deemed to be consistent with the conservation purpose of this Easement and may not be precluded or limited.

The uses and practices set forth in Exhibits B and C are not necessarily exhaustive recitals of inconsistent and consistent uses and activities, respectively. They are set forth both to establish specific prohibited and permitted activities and to provide guidance in determining the consistency of other activities with the conservation purpose of this Easement.

5. **Grantor's Present Use of Property.** Grantee acknowledges by acquisition of the rights granted and assigned by this Grant that the present uses of the Property are compatible with the conservation purpose of this Easement.

6. **Development Rights.** Grantor hereby transfers and grants to Grantee all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, including, without limitation, any rights to subdivide the Property, to record a lot line adjustment relating to the Property, to record a tentative or final subdivision map for the Property, to change the zoning designation of the Property or to construct any improvements on the Property, not including any rights specifically reserved by Grantor pursuant to this Grant, and Grantor and Grantee agree that such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property; provided, that Grantor shall be permitted to sell or transfer all or any portion of the Property to a federal, state or local governmental agency.

7. **Water Rights.** Grantor shall retain and reserve all water rights appurtenant to the Property, as well as any existing appropriative water rights associated with the Property, to the fullest extent reasonably necessary to support Grantor's permitted uses of the Property as set forth in this Grant and the conservation purpose of this Easement, and Grantor shall not transfer or convey any such water rights to any third party without first obtaining the written approval of Grantee. Further, Grantor's use of all water rights appurtenant to or associated with the Property shall be consistent with the conservation purpose of this Easement.

8. **Woodland Resource Management.** Grantor shall manage the tree resources on the Property to preserve those resources and associated wildlife habitats. Grantor shall use its reasonable, good faith, best efforts to follow such best management practices for woodland protection as may be recommended by the California Department of Forestry and Fire Protection, or other qualified governmental agency provided and only to the extent that the foregoing furthers the conservation purpose of this Easement. Grantor shall cooperate in ongoing efforts to implement a noxious weed eradication program pursuant to which tamarisk and other non-native trees and plants shall be removed from the Property; provided, that such weed eradication

program shall only utilize those eradication methods that are proven to remove or substantially reduce the existence of such tamarisk or other non-native trees and plants from the Property.

9. **Compliance with Law.** Grantor's management and use of the Property at all times shall comply with any and all applicable statutes, rules, regulations, ordinances and practices imposed by any federal, state or local governmental agency or authority.

10. **Third Party Rights.** No restriction on the use of the Property expressed herein is intended, nor shall any such restriction be construed, to limit unreasonably any duly recorded valid pre-existing right held by any third party to use the Property.

11. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Grant. Nothing in this Grant shall be construed to preclude Grantor's right to grant access to third parties across the Property, provided that such access is allowed in a reasonable manner and is consistent with the conservation purpose of this Easement.

12. **Approval Procedure.** Grantor shall notify Grantee in writing before exercising any right not expressly described in Exhibit C as a permitted use, the exercise of which may constitute a breach of this Grant. Further, any act, enterprise or activity proposed to be done or undertaken by Grantor which requires the prior approval of Grantee pursuant to the express provisions of this Grant shall be commenced only after satisfaction of the notice and approval procedures of this Section 12.

(a) **Grantor's Written Notice.** Prior to the commencement of any activity or use requiring Grantee's approval, Grantor shall deliver Grantee written notice of Grantor's intention to commence or undertake such activity or use. Such notice shall inform Grantee of all relevant aspects of such proposed activity, use or enterprise, including without limitation, a description of the nature, location and potential impact on the Property of the proposed use or activity.

(b) **Grantee's Response.** Grantee shall have forty-five (45) days from the mailing of such notice, as indicated by the registered or certified return receipt, to review the proposed activity or use and to notify Grantor of any objection thereto. Such objection, if any, shall be based upon Grantee's opinion that the proposed activity or use is inconsistent with the conservation purpose of this Easement or that the notice is incomplete or inaccurate. If, in Grantee's judgment, the proposed activity or use would not be consistent with the conservation purpose of this Easement, such notice shall inform Grantor of the reasons for Grantee's objection. Only upon the express written approval given by Grantee to Grantor may the proposed activity or use be commenced and/or conducted by Grantor, and only in the manner explicitly represented by Grantor and approved by Grantee. Grantee's approval required in this Section 12(b) shall not be unreasonably withheld or delayed by Grantee.

13. **Costs and Liabilities.**

(a) Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate and customary comprehensive general liability insurance coverage. Grantee shall have no obligation for the upkeep or maintenance of the Property, the monitoring

of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property, and Grantor shall indemnify, defend and hold harmless Grantee from and against any damage, liability, claim or expense (including, without limitation, attorneys' and experts' fees and costs) arising out of or relating to such matters, except to the extent such damage, liability, claim or expense was caused by the negligence or willful misconduct of Grantee. Upon request of Grantee, Grantor shall provide to Grantee a certificate of insurance evidencing the comprehensive general liability insurance policy obtained by Grantor which covers the Property and shall provide Grantee written evidence of any renewal of such insurance policy or the issuance of any replacement insurance policy.

(b) Notwithstanding any other provision of this Grant to the contrary, the parties do not intend and this Agreement shall not be construed such that (i) it creates in Grantee the obligations or liabilities of an "owner" or "operator", as those words are defined and used in any federal, state, local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to environmental conditions or hazardous materials, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 *et. seq.*) (collectively, "Environmental Laws"), or (ii) it creates in Grantee the obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3), or (iii) Grantee has the obligation to investigate or remediate any Hazardous Materials (as defined below) associated with the Property, or (iv) Grantee has any control over Grantor's ability to investigate and remediate any Hazardous Materials associated with the Property. Grantor represents, warrants and covenants to Grantee that Grantor's use of the Property shall comply with all Environmental Laws. For purposes of this Grant, the term "Hazardous Materials" shall mean any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in any Environmental Law.

14. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as result of, the Easement. Notwithstanding the foregoing, Grantor shall have the right in its good faith reasonable discretion, to contest as permitted by law any such taxes imposed upon or levied against the Property; provided, that Grantor diligently pursues resolution of such contested taxes and, upon such resolution, Grantor immediately pays any and all overdue taxes and penalties. Grantee shall have no obligation to pay any taxes levied on or assessed against the Property.

15. **Remedies.**

(a) **Notice and Opportunity to Cure.** If either party to this Grant (the "Non-Defaulting Party") determines that the other party (the "Defaulting Party") is in violation of any term of this Grant or that a violation is threatened, the Non-Defaulting Party shall deliver written notice to the Defaulting Party of such violation and demand corrective action sufficient to cure the violation and, if the violation or threatened violation involves injury to the Property resulting from any use or activity inconsistent with the conservation purpose of this Easement, to restore the portion of the Property so injured. The Defaulting Party shall cure the violation within thirty (30) days after receipt of notice thereof from the Defaulting Party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, shall commence curing

such violation as soon as possible within such thirty (30) day period and shall continue diligently to cure such violation until finally cured.

(b) **Non-Binding Mediation.** If the Defaulting Party disagrees with the Non-Defaulting Party respecting the existence or threatened existence of a violation by the Defaulting Party of any provision of this Grant, then the Defaulting Party and the Non-Defaulting Party may elect to submit such dispute to non-binding mediation, using either the Commercial Arbitration Rules of the American Arbitration Association ("AAA") or Judicial Arbitration and Mediation Services, Inc. ("JAMS"). Venue for any mediation proceedings under this Section 15 shall be in Sacramento, California, and the cost of such mediation proceedings shall be shared equally by each of the parties.

(c) **Judicial Remedies.** If (i) the parties are unable to resolve any dispute through the non-binding mediation proceedings set forth in Section 15(b) within thirty (30) days of the commencement of such proceedings; or (ii) the parties do not mutually agree to submit their dispute to mediation pursuant to Section 15(b), and (iii) the Defaulting Party fails to cure the violation within thirty (30) days after receipt of notice thereof from the Non-Defaulting Party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the Non-Defaulting Party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Grant, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Grant or injury to any conservation values protected by this Grant, including damages for the loss of scenic, agricultural, aesthetic or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting the Defaulting Party's liability therefor, the Non-Defaulting Party may apply any damages recovered to the cost of undertaking any corrective action on the Property.

(d) **Emergency Relief.** If the Non-Defaulting Party reasonably determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of this Grant, the Non-Defaulting Party may pursue its remedies under this Section 14 without prior notice to the Defaulting Party or without waiting for the period provided for cure to expire.

(e) **Cumulative Remedies.** Each party's rights under this Section 15 apply equally in the event of either actual or threatened violations of the terms of this Grant, and each party agrees that the remedies at law for any violation of the terms of this Grant are inadequate and that the Non-Defaulting Party shall be entitled to the injunctive relief described in Section 15(c), both prohibitive and mandatory, in addition to such other relief to which the Non-Defaulting Party may be entitled, including specific performance of the terms of this Grant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. The failure of any party to discover a violation or to take immediate legal action shall not bar such party from taking such action at a later time.

16. **Cost of Enforcement.** Except as otherwise provided herein, any costs incurred by a Non-Defaulting Party in enforcing the terms of this Grant against a Defaulting Party, including, without limitation, costs of suit and attorneys' and experts' fees and costs, and any costs of restoration necessitated by the Defaulting Party's violation or negligence under the terms of this Grant, shall be borne by the Defaulting Party; provided, that Grantee shall bear the costs of any of Grantee's annual inspections of the Property performed pursuant to Section 2(b) of this Grant.

17. **Grantee's Discretion.** Enforcement of the terms of this Grant shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Grant in the event of any breach of any term of this Grant by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Grant or of any of Grantee's rights under this Grant. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

18. **Acts Beyond Grantor's Control.** Nothing contained in this Grant shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes.

19. **Baseline Documentation for Enforcement.** Grantee acknowledges by acquisition of the rights granted and assigned by this Grant that the present uses of the Property are consistent with the conservation purpose of the Easement. In order to establish the present condition of the Property's protected values, Grantee will prepare baseline documentation respecting the condition of the Property as of the date of the recordation of this Grant, which will be maintained on file with Grantee and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Grant. After receiving and having opportunity for review of this document, Grantor acknowledges that Grantor's signature on such baseline documentation shall evidence Grantor's agreement that the baseline documentation provides collectively an accurate representation of the Property at the time of the execution of this Grant. Grantee shall provide Grantor, free of charge, one complete copy of all of the baseline documentation promptly after it is prepared, but in any event within ninety (90) days of the date of this Grant. Grantor shall cooperate with Grantee's efforts in preparing the baseline documentation, and Grantor shall accept the baseline survey as evidence of the condition of the Property at the time of conveyance of this Grant.

20. **Hold Harmless.**

(a) **Indemnity by Grantor.** Grantor shall hold harmless, indemnify and defend Grantee and its directors, officers, employees, agents and contractors and heirs, personal representatives, successors and assigns and each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including, without limitation, reasonable attorneys' and experts' fees and costs, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other

matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence or willful misconduct of any of the Indemnified Parties; (b) a violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, by Grantor, or any party other than an Indemnified Party acting upon permission from Grantor, in any way affecting, involving or relating to the Property, unless and to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties; (c) the breach by Grantor of any of its obligations set forth in this Grant; (d) the existence or administration of this Grant; and (e) the existence on or under the Property of any Hazardous Materials, unless and to the extent caused by the Indemnified Parties.

(b) **Indemnity by Grantee.** Grantee shall hold harmless, indemnify, and defend Grantor and its directors, officers, employees, agents, and contractors, and heirs, personal representatives, successors and assigns, and each of them (collectively "Grantor Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims demands, or judgements, including without limitation, reasonable attorneys' and experts' fees and costs, arising from or in any way connected with any injury to or the death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property caused by the negligence or willful misconduct of Grantee, its agents, officers, employees, and/or directors.

21. **Interpretation and Construction.** To the extent this Grant may be uncertain or ambiguous such that it requires interpretation or construction, then it shall be interpreted and construed liberally in such a way that meets the conservation purpose of this Grant and the goals referenced in the recitals and under Section 1 hereof. It is the intention of the parties that any interpretation or construction shall promote the conservation purpose of this Easement. If any provisions of this Grant or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Grant and the applications of such provisions to persons or circumstances, other than those as to which it is found to be invalid, shall not be affected thereby.

22. **Assignment by Grantee.** Neither this Grant nor the Easement is transferable, except that Grantee may assign its rights under this Grant to a public entity or an organization that is a qualified organization at the time of transfer under Section 170(h) of the Code and authorized to acquire and hold conservation easements under California law and only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Grant. As a condition of such transfer, Grantee shall require that the intended conservation purpose of this Easement continue to be carried out.

23. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Grant in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest, and to attach a copy of this Grant to any such instrument. Grantor further agrees to give written notice to Grantee of the transfer of any interest in the Property at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Grant or limit its enforceability in any way.

24. **Extinguishment.** If circumstances arise in the future such as to render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with this Section. Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Grant. The Easement created by this Grant constitutes a real property interest immediately vested in Grantee, which for the purposes of Section 24, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this Grant attributable to improvements) by the ratio of the value of the Easement at the time of this Grant to the value of the Property, without deduction for the value of the Easement, at the time of this Grant. The values at the time of this Grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Grant, pursuant to Section 170(h) of the Code. For purposes of this Section 24, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant.

25. **Condemnation.** If the Easement, or any portion of the Easement, is taken by exercise of the power of eminent domain, Grantee shall be entitled to pursue compensation in accordance with applicable laws for the value of the loss of the Easement, if any.

26. **Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given hereunder in writing shall be given in the manner set forth below, addressed to the party to be served at the addresses set forth below, or at such other address for which that party may have given notice under the provisions of this Section. Any notice, demand, approval, consent, or other communication given by (a) mail shall be deemed to have been given when deposited in the United States mail, first class and postage prepaid; (b) overnight common carrier courier service shall be deemed to be given on the business day (not including Saturday) immediately following the date it was deposited with such common carrier; (c) delivery in person or by messenger shall be deemed to have been given upon delivery in person or by messenger; or (d) electronic facsimile shall be deemed to have been given on the earlier of (i) the date and at the time as the sending party (or such party's agent) shall have received from the receiving party (or such party's agent) oral confirmation of the receipt of such transmission or (ii) one hour after the completion of transmission of the entire communication.

Grantor: Dr. Richard Louis Miller  
 4635 Paradise Avenue  
 Tiburon, California 94920  
 Telephone: (415) 435-3911  
 Facsimile: (415) 435-5201

Grantee: American Land Conservancy  
 456 Montgomery Street, Suite 1450  
 San Francisco, California 94104  
 Attention: Harriet Burgess  
 Telephone: (415) 403-3850  
 Facsimile: (415) 403-3856

27. **General Provisions.**

(a) **Governing Law.** The interpretation and performance of this Grant shall be governed by the laws of the State of California.

(b) **Entire Agreement.** This Grant sets forth the entire agreement between the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.

(c) **Severability.** If any provision of this Grant, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Grant, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **No Forfeiture.** Nothing contained herein will result in a forfeiture or revision of Grantor's fee title to the Property in any respect.

(e) **Amendment.** This Grant may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the conservation purpose of this Easement and shall comply with Section 170(h) of the Code, and any regulations promulgated thereunder, and shall be consistent with applicable state law.

(f) **Successors.** The covenants, terms, conditions and restrictions of this Grant shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(g) **Counterparts.** The parties may execute this Grant in counterparts, which shall, in the aggregate, be signed by both parties, and each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.



(h) **Drafting.** The parties hereto agree that this Grant is the product of joint draftsmanship and negotiation and that should any of the terms be determined by a court, or in any type of quasi-judicial or other proceeding, to be vague, ambiguous and/or unintelligible, that the same sentences, phrases, clauses or other wordage or language of any kind shall not be construed against the drafting party in accordance with California Civil Code Section 1654, and that each such party hereto waives the effect of such statute.

IN WITNESS WHEREOF, Grantor has executed this Grant of Easement For Conservation Purposes this 27 day of October, 1999.

GRANTOR:


Dated: October 27, 1999

  
DR. RICHARD LOUIS MILLER

GRANTEE:

AMERICAN LAND CONSERVANCY, a  
California nonprofit public benefit corporation

Dated: October 26, 1999

By:   
Harriett Burgess  
President

**EXHIBITS:**

- A - Legal Description of the Property
- B - Prohibited Uses and Practices
- C - Permitted Uses and Practices
- D - Property Map

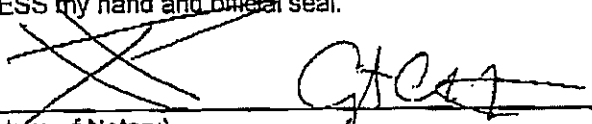
STATE OF CALIFORNIA )

COUNTY OF Marin )

On October 27, 1999, before me, Cynthia C. Heath  
 Notary Public, personally appeared Richard Louis Miller

- ☒ personally known to me - OR -  
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
 (Signature of Notary)

STATE OF CALIFORNIA )

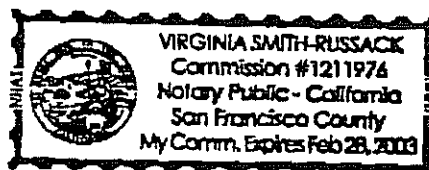
COUNTY OF San Francisco )

On Oct. 26<sup>th</sup>, 1999, before me, Virginia Smith-Russack  
 Notary Public, personally appeared Marcia Burgess

- ☒ personally known to me - OR -  
☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
 (Signature of Notary)



99 005189

**Exhibit A to Grant of  
Easement for Conservation Purposes**

**LEGAL DESCRIPTION OF THE PROPERTY**

That certain property situated in the State of California, County of Colusa, described as follows:

PARCEL ONE  
(SULPHUR CREEK PARCEL)

99 005189

Portions of Township 14 North, Range 5 West, M.D.M., more particularly described as follows:

The Southeast one-quarter of the Southeast one-quarter of fractional Section 18.

The East one-half and the Southeast one-quarter of the Southwest one-quarter of fractional Section 19.

The South one-half of the Northeast one-quarter, the Southwest one-quarter of the Northwest one-quarter and the South one-half of Section 20.

The West one-half and the Northeast one-quarter of Section 29.

**EXCEPTING THEREFROM THE FOLLOWING:**

**Exception No. 1:**

Commencing at the Southwest corner of the North East quarter of Section 29, Township 14 North, Range 3 West, M.D. M., and running thence Northerly along the midsection line of said Section 29, 561.0 feet to a point; thence at right angles Easterly 662.0 feet to a point, thence at right angles S.  $00^{\circ} 37' E.$ , 575.2 feet to the midsection line running Easterly and Westerly through said Section 29; thence Westerly along said last midsection line, 40 rods to the place of beginning and being a portion of Lot No. 8 in the Southwest quarter of the Northeast quarter of said Section 29, Township 14 North, Range 5 West, M.D.M.

**Exception No. 2:**

Beginning at the Northeast corner of the Southeast quarter of the Northeast quarter of Section 29, Township 14 North, Range 5 West, M.D.M., and running thence along the line between Section 28 and 29, said Township and range, S.  $00^{\circ} 06' E.$ , 437.0 feet to a one-inch iron pipe; thence S  $54^{\circ} 21' W.$ , 363.0 feet to a one-inch iron pipe; thence N.  $01^{\circ} 06' W.$ , 123.0 feet to a  $3/4$  inch iron pipe; thence S.  $62^{\circ} 10' W.$ , 131.0 feet to a one-inch iron pipe; thence S.  $34^{\circ} 37' W.$ , 139.0 feet to a cross cut in the top of an old Quicksilver retort; thence S.  $27^{\circ} 14' E.$ , 219.0 feet to a one-inch iron pipe; thence S.  $49^{\circ} 46' W.$ , 680.0 feet to a one and one-quarter inch iron pipe; thence N.  $86^{\circ} 46' W.$ , 640.15 feet to a one-inch iron pipe; thence N.  $03^{\circ} 57' E.$ , 1228.1 feet to a one-inch iron pipe; thence N.  $87^{\circ} 06' E.$ , 1466.2 feet to the place of beginning, being a part of the Northeast quarter of Section 29, Township 14 North, Range 5 West, M.D.M., Colusa County, California, designated as Tract No. One on plat of Survey No. 8 on Section 29, Township 14 North, Range 5 West, M.D.B M., Colusa County, California, surveyed June 15-16-17, 1919 by Chas. De St. Maurice, County Surveyor, Colusa County, California.

**Exception No. 3:**

Commencing at a one-inch gas pipe situate S.  $87^{\circ} 06' W.$ , 1466.2 feet from a four inch by four inch post at the  $1/16$  section corner between the North half of Section 28, and the North half of Section 29, Township 14 North, Range 5 West, M.D.M., and running thence S.  $03^{\circ} 57' W.$ , 333.1 feet, to a one-inch gas pipe; thence S.  $76^{\circ} 50' W.$ , 347.0 feet to a one and one-fourth inch gas pipe; thence N.  $77^{\circ} 06' W.$ , 157.9 feet to a one inch gas pipe thence N.  $05^{\circ} 03' W.$ , 349.1 feet to a one inch gas pipe; thence N.  $86^{\circ} 52' E.$ , 62.6 feet to a one and one-fourth inch gas pipe; thence N.  $87^{\circ} 06' E.$ , 473.5 feet to the place

of beginning, designated as Tract No. Two on plat of Survey No. 8 on Section 29, Township 14 North, Range 5 West, M.D.M., Colusa County, California, surveyed June 15-16-17, 1919 by Chas. De St. Maurice, County Surveyor, Colusa County, California

**Exception No. 4:**

Commencing at the Southwest corner of the Northeast quarter of Section 29, Township 14 North, Range 5 West, M.D.M., and running thence Northerly along the midsection line of said Section 29, 561.0 feet; thence Easterly 662.0 feet to the point of beginning; thence Northerly 200.04 feet to a point; thence North  $35^{\circ} 46' W.$ , 36.3 feet to a point; thence S.  $28^{\circ} 25' W.$ , 249.0 feet to a point; thence S.  $85^{\circ} 45' E.$ , 140.0 feet to the point of beginning.

TOGETHER will all portions of any of the following described property which are within a radius of one-quarter of a mile from any point on the exterior boundary of any of the foregoing exceptions, 1, 2, 3, or 4.

**Exception No. 5:**

The Little Giant Claim, the Dewey Claim, and Central Claim, known as U.S. Lot 3605, also known as the Central Consolidated Quicksilver Mining Claim, consisting of Central, Little Giant, and Dewey Lode Claims designated as Lot 3605 as described in patents of the United State of America to Empire Quicksilver Mining Company, dated July 10, 1900, recorded September 6, 1900, Book k of Patents, page 405, Colusa County Records, said patented claims being located in Section 28 and 29, Township 14 North, Range 5 West, M.D.M., in said County of Colusa, State of California

**Exception No. 6:**

The portions of the Manzanita Location, also known as Lot 45, lying within Section 29, Township 14 North, Range 5 West, M.D.M., Colusa County, California, and North of a line running South  $87^{\circ} 06' W.$  from the Northeast corner of the Southeast quarter of the Northeast quarter of said Section, and the portion of said Manzanita Location lying in Section 28, said Township, Range, County and State. United States Lot 3606 consisting of the Empire, Hidden treasure, Mercury King and Mercury Queen lot claims as described in patents of the United States of America to Empire Quicksilver Mining Company, dated July 10, 1900, recorded in Book K of Patents, page 408, Colusa County records, all of the same being located in Section 28, Township 14 North, Range 5 West, M.D.M., Colusa County, California, including Lot 2 in Section 28, Township 14 North, range 5 West, M.D.M., Colusa County, California (but not extending into Section 29).

**Exception No. 7:**

Commencing at a point 128 feet 6 inches South from a point on the Southeasterly boundary of the Hughes Mill Site which said point on the Southeasterly boundary of the Hughes Mill Site is 265 feet distant, on a line running S.  $49^{\circ} 34' W.$ , from said stake which marks the Southeasterly corner of the Hughes Mill Site and the Southwesterly corner of the Manzanita Mine, said point of commencement would be intersection, or nearly so, by a continuation Southeasterly of the line dividing the Hughes Mill Site and the Monticello Mill Site, running thence N.  $80^{\circ} 16' E.$ , fifty feet; thence due South one hundred feet; thence due West to a point one hundred feet, more or less, due South of the point of commencement;

thence due North to the place of beginning, being the same lot or parcel of land conveyed by deed from Polly Ann Tully and Mary A. Tully to Frank J. Schuckman, dated February 20th, 1900, recorded in Book 53 of Deeds, page 380, Colusa County Records.

**Exception No. 8:**

That certain lot or parcel of land conveyed by Deed from Polly Ann Tully to George W. Persons, dated March 5th, 1901, recorded in Book 51 of Deeds, page 195, Colusa County Records, herein particularly described as follows: Beginning at the Northwest corner of that certain lot or parcel of land conveyed by Deed from Polly Ann Tully and Mary A. Tully to Frank J. Schuckman, dated February 20, 1900, recorded in Book 53 of Deeds, page 380, Colusa County Records; and running thence South one hundred feet, more or less, along the West line of the said Frank J. Schuckman lot to the Southwest corner thereof; thence Easterly along the South line of the aforesaid Frank J. Schuckman lot, fifty feet to the Southeast corner thereof; thence South to the quarter section line running Easterly and Westerly through the center of Section 29 in Township 14 North, Range 5 West, M.D.M., thence Westerly along said quarter section line eighty-eight feet, more or less, to the Southeast corner of that certain lot or tract of land conveyed by Deed from Tilden Jones to Sarchel H. Smith, dated May 26, 1896, recorded in Book 40 of Deeds, page 207, Records of Colusa County; thence North along the East boundary line of the said Sarchel H. Smith tract of land to the Northeast corner thereof; thence N. 80° 16' E., thirty-eight feet, more or less, to the place of beginning and being the same parcel of land conveyed by Deed from Polly Ann Tully to George W. Persons, as aforesaid.

**Exception No. 9:**

That certain lot or parcel of land conveyed by Deed from Tilden Jones to Sarchel H. Smith, dated May 26, 1896, recorded in Book 40 of Deeds, page 207, herein described as follows: Commencing on the South line of the Northeast quarter of Section 29, Township 14 North, Range 5 West, M.D.M., where the South corner of the Monticello Mill Site touches said line, and running thence Northwesterly along the Southeasterly boundary of said Monticello Mill Site until it touches the County Road, surveyed by J.R. Price as described in Survey of County Road No. 171 New Series of Colusa County, filed in the office of the County Clerk of Colusa County; thence along said County Road to a point fifty feet Southerly beyond a stake between the Hughes Mill Site and the Monticello Mill Site, from which point the Northwest corner of that certain lot or parcel of land conveyed by Deed from Polly Ann Tully and Mary A. Tully to Frank J. Schuckman, dated February 20th, 1900, recorded in Book 53 of Deeds, page 380, Colusa County Records, bears N. 80° 16' E., thirty-eight feet, more or less, distant; thence South to the aforesaid quarter section line; thence Westerly along said quarter section line to the place of beginning, and being the same parcel of land conveyed by Deed from Tilden Jones to Sarchel H. Smith, as aforesaid.

The Northeast one-quarter and all that portion of the North one-half of the Southeast one-quarter lying in the County of Colusa of Section 30.

The above described parcels of land contain a net area of 1411 acres, more or less.

**Exhibit B to Grant of  
Easement for Conservation Purposes**

**PROHIBITED USES AND PRACTICES**

The following uses and practices, though not necessarily an exhaustive recital of inconsistent uses and practices, are inconsistent with the conservation purpose of this Easement and shall be prohibited upon or within the Property.

1. The impairment of the protected conservation purpose of this Easement, except as otherwise expressly provided herein.
2. The establishment of any commercial ranching, grazing, agricultural, industrial or other uses which would materially impair or interfere with the conservation purpose of this Easement.
3. The construction, placing or erection of any sign or billboards, except for the following signs which shall not exceed forty-eight (48) inches square (a) a sign, or signs, reasonably necessary for the identification of the Property; or (b) signs restricting access, hunting or trespassing; (c) interpretive signs; (d) informant; or (e) warning signs.
4. Except as provided in Exhibit C of this Grant, the erection, construction, reconstruction, placement, replacement or maintenance of any improvement, building or fencing on the Property.
5. The division, subdivision or defacto subdivision of the Property, whether by physical or legal process, except that the voluntary conveyance to a government or nonprofit entity subject to the conservation purpose of this Grant exclusively for public access purposes shall not be prohibited by this paragraph.
6. Any use of any motorized vehicles off roadways on the Property, except in connection with any hunting activities permitted under Exhibit C.
7. The paving, construction or relocation of any roadway, including, without limitation, any bulldozing or grading required in connection therewith.
8. The dumping or accumulation of trash, hazardous materials, ashes, garbage, inoperative vehicles, waste or other unsightly or offensive material on the Property.
9. The exploration, development, mining, extraction, severance or removal of any minerals in, on and/or under the Property, in whatever form or character, whether organic or inorganic, liquid or solid, including, without limitation, gold, silver, uranium, coal, oil, gas and other metals and hydrocarbons, geothermal resources, sand, gravel, clay, limestone, decorative rock and other valuable mineral materials except for any geothermally heated water that can be

extracted from below the surface of the property without materially impairing the surface of the property and without materially impairing or interfering with the conservation purpose of this easement.

10. The cutting, uprooting or removal of any trees or other natural growth located on the Property, except as may be required for fire prevention, maintenance of foot trails, fire lanes, other access, existing power lines and such other uses as may be conducted by Grantor in connection with Grantor's permitted uses of the Property, elimination of deceased growth or insects or heating of on site facilities permitted under Exhibit C; provided, that in no event shall Grantor be permitted to remove any non-native trees or plants that are located in any riparian corridor on the Property.

11. The use of any dynamite or other explosives on the Property, except if required in connection with any permitted uses of the Property.

12. The damming, diverting or other interference of any natural water flow on, under or through the Property or the filling of any portion of the Property with any substance, including any exchange, replacement or removal of any soils or other substances from the Property.

13. The use of the Property as a ball field, golf course or commercial stock yard.

14. The use of any herbicides, rodenticides or weed abatement activities, except to the extent that such substances and activities are effective to remove non-native trees or plants and are consistent with the conservation purpose of this Easement.

15. To utilize the Property for any ranching, grazing or agricultural purposes; provided, that horseback riding activities shall be permitted on the Property in connection with any of the permitted uses set forth on Exhibit C.



**Exhibit C to Grant of  
Easement for Conservation Purposes**

**PERMITTED USES AND PRACTICES**

The following uses and practices, though not necessarily an exhaustive recital of consistent uses and practices, are permitted under this Agreement, and they are not to be precluded, prevented or limited by this Agreement, provided that they are undertaken in accordance with the terms and provisions of this Agreement and in compliance with all applicable federal, state and local laws, statutes, rules, regulations and ordinances and that all applicable governmental approvals and permits are properly obtained.

1. To maintain and repair existing fences, roads, ditches and ponds on the Property. In the event of destruction, deterioration or obsolescence of any fencing, roads, ditches or ponds whether existing at the date of this Grant or constructed subsequently pursuant to the provisions of this paragraph, Grantor may replace same with ones of similar character, nature, size, configuration, function, capacity, visual impact and location. In addition, Grantor may construct one water storage reservoir in the area identified on the map of the property attached to this Grant as Exhibit D.

2. To utilize the Property for recreational and educational purposes that require no development of the land, including without limitation, wildflower viewing, hiking and nature study.

3. To utilize the Property for hunting activities in full compliance with any and all federal, state and local statutes, laws, rules, regulations and ordinances.

4. To undertake conservation practices that promote soil stabilization and reduce erosion in accordance with sound, generally accepted practices.

5. To remove tamarisk, star thistle and other non-native trees and plants in accordance with Section 8(b) of this Grant, including the use of prescriptive burn practices in full compliance with any and all federal, state and local statutes, laws, rules, regulations and ordinances.

6. To develop, construct, maintain and repair two lodge facilities, neither of which shall exceed four thousand (4,000) square feet (the "Lodges"), and shall be located in the portion of the Property identified on the Property Map as the "Lodge Site(s)."

7. To construct and maintain, without paving, such new roads as Grantor deems necessary for access to the Lodge. Without further permission from Grantee, Grantor may construct and maintain unpaved roads on the Property that are reasonably necessary and incidental to carrying out the uses and operations permitted on the Property under this Easement; provided, that such road construction shall not materially impair or interfere with the conservation purpose of the Easement.

99 005189

8. Upon Grantee's prior approval, which approval shall not be unreasonably withheld or denied, Grantor may install, maintain, repair, replace, remove and relocate electric, gas, and water facilities, sewer lines and/or other public or private utilities, including telephone or other communication services over, on or under the Property for the purpose of providing electrical, gas, water, sewer, or other utilities to serve the Lodges.

99 005189

**Exhibit D to Grant of  
Easement for Conservation Purposes**

**PROPERTY MAP**

99-005189

19-FOOT  
CUTTER

(X) 13247

Alert  
Spring

Shelburne

AND

Potential Reservoir Site

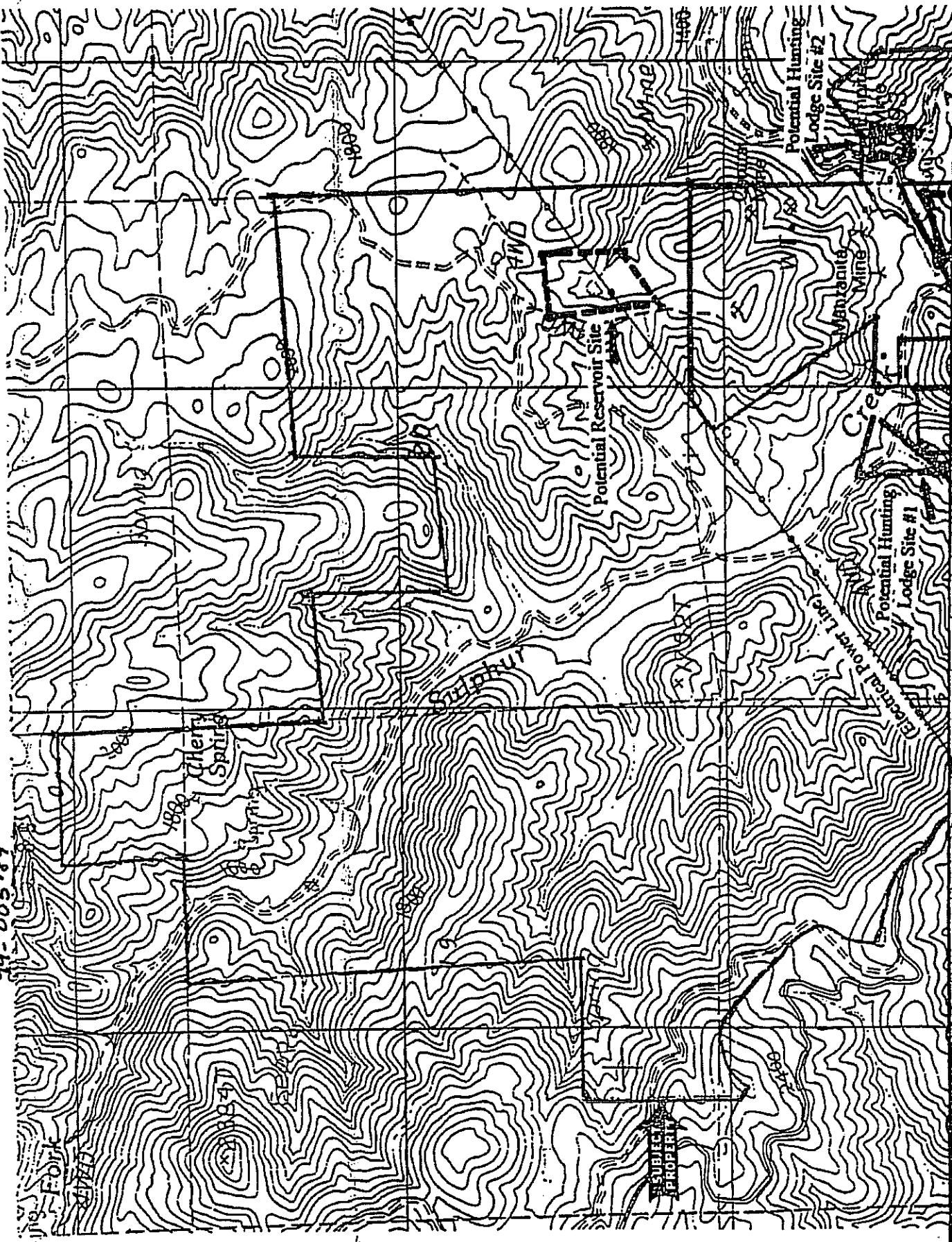
SUBJECT  
PROPERTY

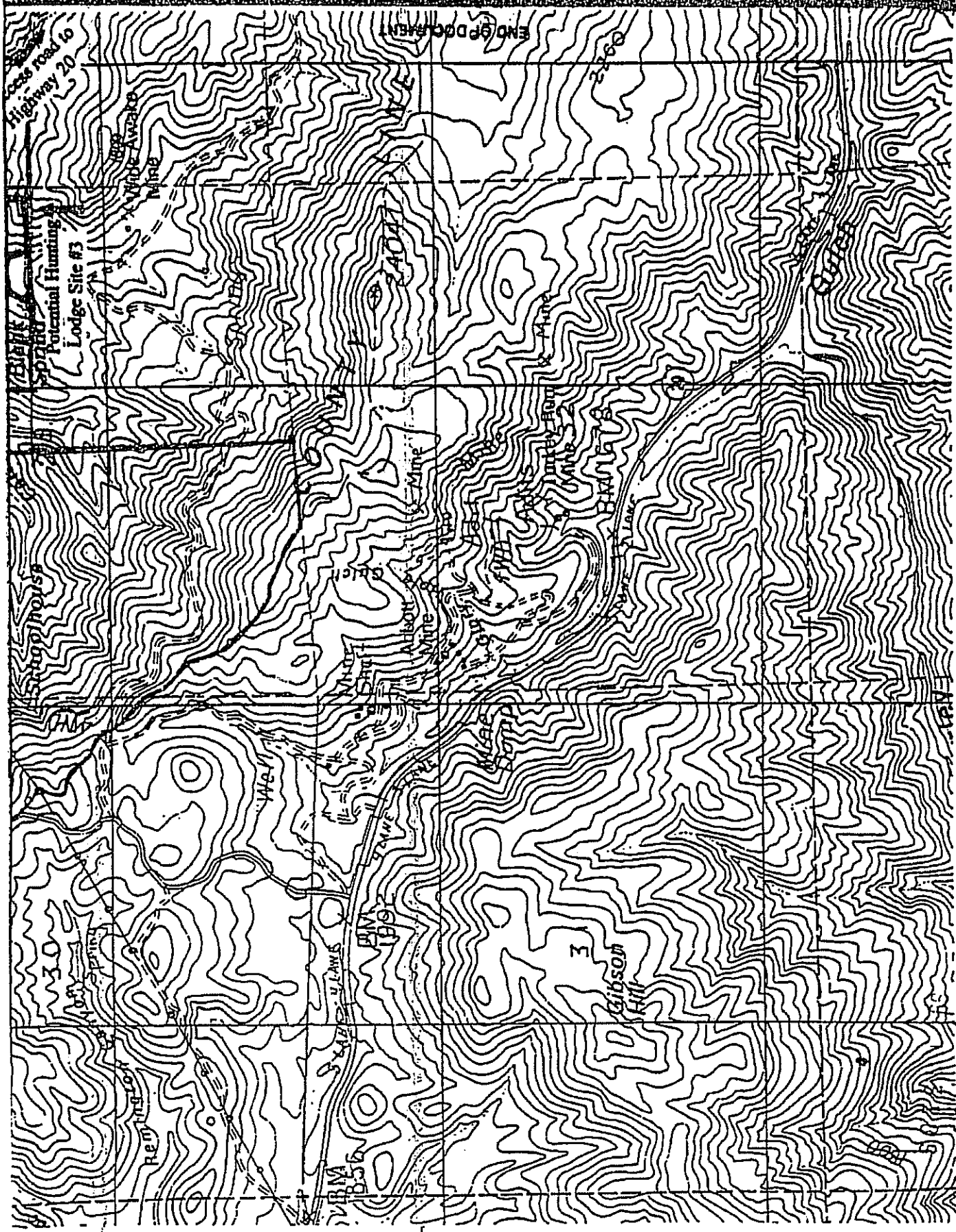
2450

Potential Hunting  
Lodge Site #1

Manteno  
Mine

Potential Hunting  
Lodge Site #2





END OF DOCUMENT

Highway 20  
Potential Hunting  
Lodge Site #3

Sagehen

MINE

Gibson  
Hill

CUTTER

REMAINING

6500-66

## **ATTACHMENT 2**

**WILDLIFE CONSERVATION BOARD**

**GRANT AGREEMENT  
CALIFORNIA RIPARIAN HABITAT CONSERVATION PROGRAM  
WC - 2016BT**

**Between**

**STATE OF CALIFORNIA/WILDLIFE CONSERVATION BOARD**

**and**

**AMERICAN LAND CONSERVANCY**

**for**

**RIPARIAN HABITAT RESTORATION, SULPHUR CREEK**

**COLUSA COUNTY**

**State of California  
Resources Agency  
Wildlife Conservation Board  
Department of Fish and Game**

**Project Title:** Riparian Habitat Restoration, Sulphur Creek

**Grantee:** American Land Conservancy

**Federal Tax Number:** 943121656

**Mailing Address:** 1388 Sutter Street, Suite 810  
San Francisco, CA 94109

**Telephone:** (415) 749-3026

**Project Director:** Cynthia Berg

**Grantor:** State of California, Wildlife Conservation Board

**State Project Manager:** Bonnie Turner  
1807 13<sup>th</sup> Street, Suite 103  
Sacramento, CA 95814-7117  
(916) 445-1093

**Landowner:** Dr. Richard Louis Miller  
4635 Paradise Drive  
Tiburon, CA 94920  
(415) 435-3911

**Grant Agreement Number:** WC-2016BT

**Grant Amount:** \$180,000

**Term of Agreement:** August 22, 2002 through August 21, 2005 for capital improvements and restoration activities and August 22, 2002 through August 21, 2027 for management practices.

**Project Life:** 25 years



## **1. SCOPE OF THE AGREEMENT**

Pursuant to Chapter 4.2 of Division 2, (commencing with Section 1385) of the California Fish and Game Code, and the approval granted by the Wildlife Conservation Board on August 22, 2002, the Wildlife Conservation Board (Board) hereby grants to the American Land Conservancy (Grantee) a sum not to exceed One Hundred Eighty Thousand Dollars (\$180,000.00), subject to the terms and conditions of this agreement.

## **2. PURPOSE OF THE GRANT**

The purpose of this Grant Agreement is to restore 75 acres of riparian habitat along Sulphur Creek, near Wilbur Hot Springs west of Sulphur Creek's confluence with Bear Creek in Colusa County, as shown on the attached Exhibit A - LOCATION MAP.

## **3. AMOUNT AND PROCEDURE FOR PAYMENT**

- 3.1 The amount payable under this agreement shall be for approved budgeted items and shall not exceed \$180,000.00. Payments shall be made not more frequently than monthly in arrears upon approval by the Board and upon receipt of an invoice in triplicate, bearing reference to the Grant Agreement Number WC-2016BT.

The invoices must be itemized using the categories and following the format of the attached budget entitled Exhibit B - BUDGET, which is incorporated herein and made a part hereof by reference. The Board may withhold ten percent (10%) from each payment until the State has approved the acceptance of the project.

Upon completion of this Grant Agreement as outlined under "Statement of Work/Grantee's Responsibility," and upon approval of all work by the State Project Manager, the Grantee may submit an invoice requesting the ten percent (10%) retention. Invoices should be sent to:

Wildlife Conservation Board  
1807 13<sup>th</sup> Street, Suite 103  
Sacramento, California 95814

- 3.2 The Grantee agrees to submit all final billings within thirty (30) days after construction of the project.
- 3.3 The Grantee agrees that within thirty (30) days following completion of the capital improvements, the Grantee will submit a final report of accomplishments, including pre and post project photographs, and a copy of "as-built" plans (preferably in digital format) to the Board.

#### **4. BUDGET**

The attached Budget is an estimate of the Grantee's anticipated costs of performance hereunder. If required by actual costs, and approved by Board in writing before encumbering the actual costs that are higher than estimated, the Board may approve and reimburse expenditures in any of the budgeted categories in excess of the estimated costs, provided there are offsetting, decreased expenditures in other budgeted categories. If required by actual construction costs and substantiated with an approved change order, the Grantee may request to encumber those funds budgeted for contingencies. The expenditure of these funds will only be allowed with approved change orders. The total reimbursement to the Grantee hereunder shall not exceed the total amount without written amendments hereto.

#### **5. COMMENCEMENT OF PROJECT AND DISBURSEMENT**

The Grantee acknowledges that the approval of the grant proposal by the Board on August 22, 2002 does not constitute authorization for the expenditure of project funds. The Grantee is not authorized to commence work and the Board shall not be obligated to disburse any funds under this agreement until the Grantee has received a "Notice to Proceed" from the Board.

#### **6. STATEMENT OF WORK**

##### **6.1 Grantee Responsibility:**

- 6.1.1. Based upon the attached design and specifications entitled Exhibit C-WORK PLAN, which is incorporated herein and made a part hereof by reference, the Grantee shall be responsible for design and restoration of 75 acres of riparian vegetation along Sulphur Creek.
- 6.1.2 The Grantee is responsible for recognizing the cooperative nature of this project and shall provide credit to the Landowner, the Board, the Department of Fish and Game and any other contributor on signs, demonstrations, promotional materials, advertisements, publications or exhibits prepared by the Grantee referencing this project. Should this project be funded all or in part by the Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Bond Act of 2000 (Park Bond), then Grantee is required to install and maintain a sign at a conspicuous and appropriate location within or near the project site in accordance with the "Proposition 12 Park Bond Guidelines" available from the Board or online at [www.resources.ca.gov/bond](http://www.resources.ca.gov/bond).
- 6.1.3 The Grantee is responsible for obtaining all necessary permissions and approvals, and complying with all regulations, ordinances and statutes that

apply to the project and any work performed pursuant to this Grant Agreement.

## **6.2 Landowner Responsibility**

6.2.1 The Landowner shall be responsible for habitat management activities as specified the Exhibit D - MANAGEMENT PLAN, which is incorporated herein and made a part hereof by reference.

6.2.2 The Landowner agrees that management practices as referenced in the MANAGEMENT PLAN, shall be performed each year until August 21, 2027.

6.2.3 If anytime during the 25 year period of this project, the Landowner believes the management practices should be modified, the Landowner shall contact the Grantee and the State Project Manager and discuss the proposed management changes.

Once a year, the project review team, consisting of the Landowner, the employees of the Board, the California Department of Fish and Game and the American Land Conservancy are encouraged to meet and discuss any modifications and/or changes to the management practices identified in the MANAGEMENT PLAN.

6.2.4 The Landowner shall permit employees of the Board, the California Department of Fish and Game, and/or the American Land Conservancy access to the subject property for purposes of project development, inspections and project monitoring during the life the project. Such access shall be mutually agreed to by the Landowner and the requesting agency and shall be preceded with a written or verbal request to the Landowner. At a minimum, the project site shall be inspected once a year.

6.2.5 In the event of Landowner violation of the Grant conditions, the Board shall give notice to Landowner, describing such violation. If Landowner does not cure the violation, or fails to commence such cure described in the Board's notice within ninety (90) days, then Landowner shall be in violation of this Grant Agreement.

6.2.6 If any of the terms and conditions of this agreement is violated by the Landowner, the Board shall be reimbursed in an amount equal to that of the remaining portion of the grant. The reimbursement shall be determined by the following Payback Formula:

"Payback Formula"

**Formula:** Dollar amount of grant divided by the life of the project (Project Life), times the number of years remaining in the project.

**Example:** A \$50,000.00 grant is awarded for the restoration and enhancement of wetland and riparian habitat, and the Project Life is 25 years. With ten years remaining on the Project Life, if the Landowner is not able to carry out the provisions of the agreement, the following payback calculations would be made:

$$(\$50,000.00 \div 25 \text{ years}) \times 10 \text{ years} = \$20,000$$

Using this example, the Landowner would owe the Board \$20,000.

## **7. TERMS OF GRANT AGREEMENT**

### **7.1 Use of Subcontractors**

The Grantee is fully responsible for all work performed under this Agreement, including subcontracted work

### **7.2 Liability**

The Grantee shall indemnify, protect, hold harmless, and defend the Board and the State of California, and their respective officers, agents, and employees, against any and all claims, demands, damages, losses, costs, expenses, or liability arising out of the performance or failure to observe or perform any obligation of the Grantee under this agreement.

### **7.3 Amendments**

This Grant Agreement may be modified only upon written approval of the Executive Director of the Wildlife Conservation Board and the Grantee. No oral understanding or agreement not incorporated in this document shall be binding on any of the parties.

### **7.4 Accounting/Records/Audits**

The Grantee shall maintain financial accounts, documents, and records relating to the Grant Agreement. The accounting information must accurately reflect fiscal transactions so that the total cost of the project can be readily determined and records readily available upon demand. The Grantee must retain all project records for three years after final

payment is made by the Board. The documents may be subject to examination and audit by the Board or the State of California during this period.

#### **7.5 Use of Grant Funds to Secure Additional Funding**

The Grantee agrees that the funding provided under this agreement shall not be used as matching funds for other grants, or to secure loans or other monetary awards without written approval from the Executive Director, Wildlife Conservation Board. Such approval shall not be unreasonably withheld as long as the purpose for which the grant was awarded is maintained.

#### **7.6 Completion Dates**

The Grantee shall complete all restoration activities, as referenced in WORK PLAN, no later than August 21, 2005. The Grantee and Landowner shall be responsible for all management and maintenance activities, as referenced in the MANAGEMENT PLAN, until August 21, 2027.

#### **7.7 Cancellation of Grant Agreement**

All parties to this agreement may terminate the agreement for any reason by providing the other parties with 30 days written notice. If the Board elects to terminate this agreement as provided herein, the Grantee shall take all reasonable measures to prevent further costs to the Board under this agreement. The Board shall be responsible for non-refundable obligations or expenses incurred by the Grantee in the performance of this agreement prior to the date of the notice to terminate, but only up to the unpaid balance of funding authorized in this agreement. Termination by the Landowner of the habitat management and maintenance portion of this agreement would trigger the payback provision of this agreement.

#### **7.8 Resolution of Grant Agreement Disputes**

The State Project Manager has initial jurisdiction over each controversy arising under or in connection with the interpretation, performance or payment under this agreement. The Grantee will diligently pursue with the State Project Manager a mutually agreeable settlement of any such controversy.

If the controversy cannot be resolved at this stage, the Grantee and/or Landowner must direct the grievance together with any evidence, in writing, to the Executive Director of the Board. The grievance must state the issues in the dispute, the legal authority or other basis for the Grantee's and/or Landowner's position and the remedy sought.

The Executive Director or designee shall meet with the Grantee and/or Landowner to review the issues. A written decision signed by the Executive Director or designee shall be returned to the Grantee and/or Landowner within twenty (20) working days of receipt of the Grantee's and/or Landowner's letter.

#### **7.9 Drug-Free Workplace Certification**

By signing this grant agreement, the contractor or grantee hereby certifies under penalty of perjury under the laws of the State of California that the contractor or grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- 7.9.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- 7.9.2 Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
  - a) the dangers of drug abuse in the workplace;
  - b) the person's or organization's policy of maintaining a drug-free workplace;
  - c) any available counseling, rehabilitation and employee assistance programs; and,
  - d) penalties that may be imposed upon employees for drug abuse violations.
- 7.9.3 Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:
  - a) will receive a copy of the company's drug-free policy statement; and,
  - b) will agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the contractor or grantee may be ineligible for award of any future state contracts if the department determines that any of the following has occurred: (1) the contractor or grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

#### **7.10 Union Organizing**

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- 7.10.1 No state funds disbursed by this Grant will be used to assist, promote or deter union organizing.
- 7.10.2 Grantee shall account for state funds disbursed for a specific expenditure by this Grant, to show those funds were allocated to that expenditure.
- 7.10.3 Grantee shall, where state funds are not designated as described in 7.10.2 above, allocate, on a pro-rata basis, all disbursements that support the grant program.
- 7.10.4 If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

#### **7.11 Constructive Notice**

The terms, conditions and restrictions of this agreement and the provisions of the project shall be binding upon, and inure to, the benefit of the parties hereto and their personal representatives, heirs, successors, and assigns and shall continue as a servitude running with the land for the Project Life, until August 21, 2027. A separate document, in a form substantially as shown in Exhibit E, MEMORANDUM OF GRANT AGREEMENT, providing constructive notice of this agreement, shall be signed by the Landowner and recorded with the appropriate County Recorder's Office.

#### **8. AUTHORIZATION**

The signature of the Executive Director certifies that at a meeting of the Wildlife Conservation Board held on August 22, 2002, the Board authorized the expenditure of up to \$180,000.00 for the purpose of awarding a grant to the American Land Conservancy. The agreement shall be deemed executed and effective when signed by all parties, received in the office of the Wildlife Conservation Board and the Grantee has received a Notice to Proceed from the Board. The Wildlife Conservation Board, the American Land Conservancy and the Landowner, do hereby agree to the terms and conditions referenced herein.

**STATE OF CALIFORNIA  
WILDLIFE CONSERVATION BOARD**

By: Al Wright  
Al Wright  
Executive Director  
Wildlife Conservation Board

Date: 8/26/02

**GRANTEE AMERICAN LAND CONSERVANCY**

By: Harriet Burgess  
Harriet Burgess, President

Date: 7-1-02

**SIGNATURE OF LANDOWNER**

Richard Louis Miller  
Richard Louis Miller

Date: 7/15/02



## FUNDING CERTIFICATION

I hereby certify that sufficient funds are available to award this grant.

Roxanne Woodward  
Fiscal Officer

6/21/02  
Date

**Grantee:**

American Land Conservancy  
1388 Sutter Street  
San Francisco, California 94109  
Contact: Cynthia Berg  
(415) 749-3026

**WCB Grant Agreement Number:**

WC - 2016BT

**Grant Amount:**

\$180,000

**Fund Source:**

Habitat Conservation Fund Section 2786(e/f)

**Appropriation Item:**

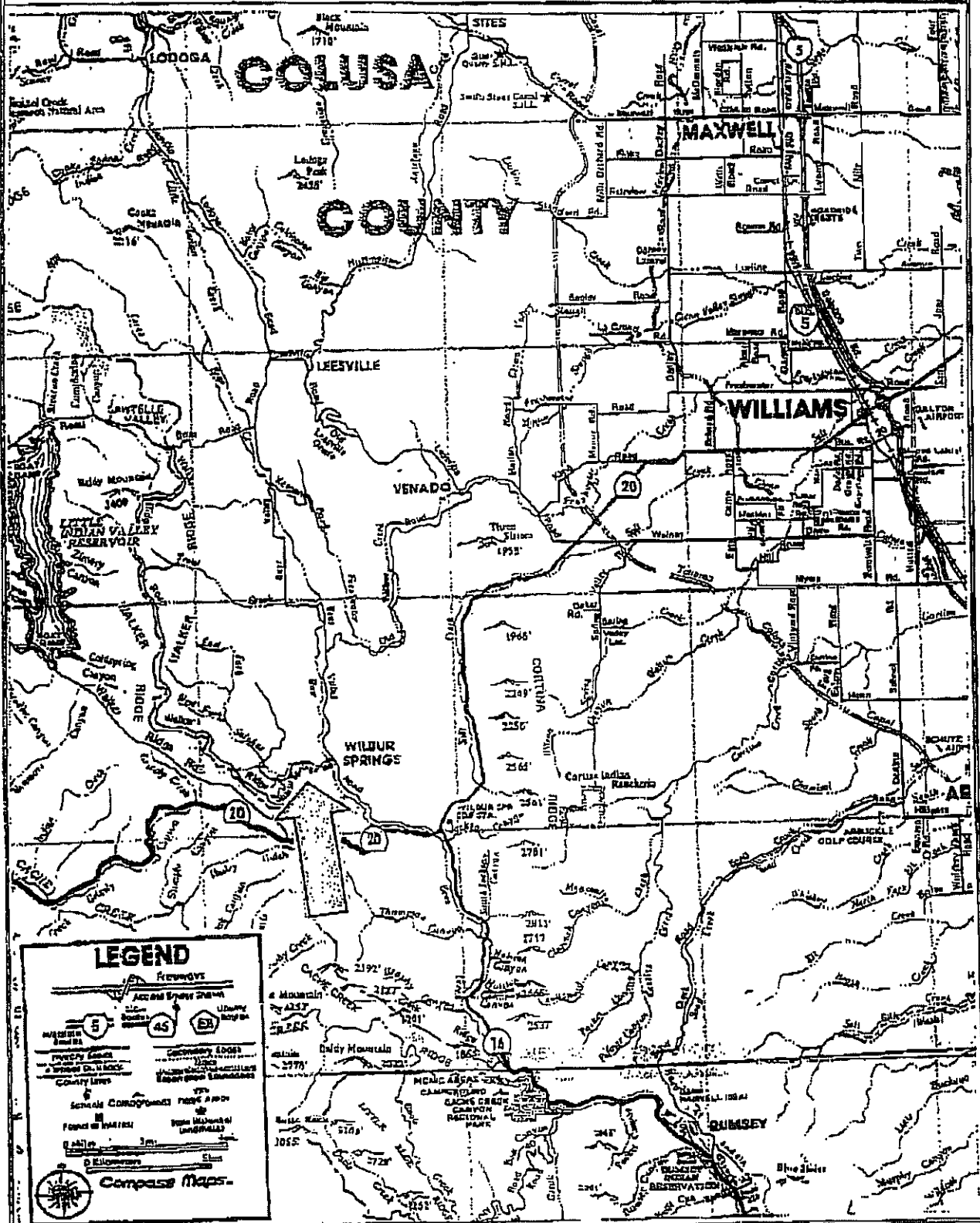
Chapter 106, Statutes of 2001  
3640-301-0262

**Expenditure Code:**

02-1000-841-51000

# EXHIBIT A: LOCATION MAP

## RIPARIAN HABITAT RESTORATION, SULPHUR CREEK COLUSA COUNTY



Compass Map: GLENN, COLUSA, YOLO COUNTIES

Project Budget for Riparian Habitat Restoration, Sulphur Creek Colusa County, (2002-2005)						
Description	WCB	UCD*	WHS*	NRCS*	ALC*	
Project management	\$73,000					
Invasive plant control	\$67,500		\$10,000			
Scientific consulting						
Bird-box, brush pile consultation	\$1,000					
Volunteers for monitoring cavity-nesting birds & brushpile construction			\$4,500			
Revegetation & erosion control				\$18,000		
Revegetation assistance	\$10,000					
Volunteers		\$2,000	\$5,000			
Travel						
40 round trips/yr. 165 miles @ 0.33mile, 3 years	\$6,500					
Equipment						
Bluebird boxes	\$500					
Revegetation supplies	\$4,500	\$500				
Office & greenhouse facilities		\$20,000				
Grant administration					\$6,000	
Lodging and cooking facilities			\$16,500			
SUBTOTAL	\$163,000					
Contingency funds	\$17,000					
TOTALS	\$180,000	\$22,500	\$36,000	\$18,000	\$6,000	\$262,500
*in-kind contribution of time and/or materials						

## **WORK PLAN**

The riparian habitat restoration on 75 acres of the middle and upper reaches of Sulphur Creek within the Bear Creek watershed in western Colusa County will enhance restoration efforts by other agencies by eliminating a major upstream seed source of tamarisk within the watershed.

Sulphur Creek is a perennial drainage with west and east forks, most of which is under Wilbur Hot Springs ownership. This drainage system faces threats of noxious weeds, loss of native plant cover, and accelerated soil erosion from gullies, head cuts, and exposed mine tailings. Tamarisk (*Tamarix parviflora*) control within the drainage is a top priority to remove seed sources for both Bear and Cache creeks.

The American Land Conservancy, Grantee, is responsible for completing the following actions:

- Detection and removal of tamarisk along 3.5 miles of Sulphur Creek and two intermittent tributaries over a period of 3 years.
- Re-application of herbicidal treatments for 3 years as necessary to remove stump regrowth and new seedlings in project area.
- Restoration of selected native grasses and forbs which are locally available within the watershed.
- Monitoring of tamarisk control work and revegetation work. Regular site visits during three-year project.
- Sampling revegetation plots for survival data during three-year control project, as appropriate.
- Providing annual reports summarizing yearly tamarisk control and restoration activities during the three year control project.

All ecosystem restoration work is conducted within an adaptive management framework to help achieve goals. Integrated vegetation management practices for weed control projects are used, taking caution to minimize herbicide use, avoid water and non-target plants. Establishment of replacement plants is part of an ecologically sound restoration program. Use of local native plants, chosen because of site specific knowledge, will likely be more successful in the long term and will enhance other restoration efforts in the watershed by providing examples of what will be successful in restoration of this watershed.

## MANAGEMENT PLAN

This management plan provides information and describes management actions for the monitoring and control of tamarisk following the completion of the WCB Sulphur Creek Riparian Habitat Restoration Project Work Plan. The major goal of this management plan is to ensure that tamarisk does not re-establish itself in the Sulphur Creek drainage after the intensive three-year removal project is completed in 2005.

### Management Area

The Management Plan will cover the entire property where tamarisk is currently growing or might be expected to establish: i.e., drainages, floodplains, ponds, springs, or any other wetland habitat. Monitoring and maintenance work by the property owner (Richard Louis Miller) is expected to be minor over the 25-year lifespan of the grant agreement due to tamarisk's short-lived seed (about four months), upstream position of the infestation, and the intensive control efforts planned. BLM has already conducted control work on an adjacent property (Blank Springs) and eradication work is being planned for the downstream Bear Valley Ranch property. These efforts will further reduce the likelihood of tamarisk re-invasion of Sulphur Creek. Nevertheless, after tamarisk removal, maintenance and monitoring is considered an essential component of the grant agreement and must be continued as needed during the 25-year period. The property owner is responsible for the following management actions.

### Management Actions

Task 1) Beginning in 2006, a May-June tamarisk survey in appropriate habitats should be conducted every year for the first six years. If no re-infestation is found during this time period, surveys may continue on a bi-yearly basis. The purpose of these surveys is to search for new tamarisk seedlings or re-growth from plants that were treated in prior years. Walking surveys should be conducted in the previously treated areas as well as potential invasion sites, i.e., the wetland areas described above. These surveys can be performed by Wilbur Hot Springs management, staff, or a knowledgeable subcontractor.

Task 2) This task is for information purposes only and may be undertaken by the Landowner at his discretion. It is not required as part of the management agreement. Any herbicides used to deter tamarisk regrowth or sprouting must be applied by a qualified applicator, pest control advisor, or in cooperation with someone holding the appropriate Department of Pesticide Regulation certification. If saplings are found, they should be treated by either the "cut-stump" or "foliar-applied" method, depending on efficacy, and proximity to water. The cut-stump treatment requires cutting stems and immediately treating the cut stems with the herbicide, Imazapyr, or a combination of Imazapyr (5%) with Garlon (20%), mixed into Hasten or a similar vegetable oil carrier\*. The foliar-applied treatment requires an herbicide application of Imazapyr (3%) with Roundup (5%) and an appropriate surfactant mixed with water. Herbicides should be applied with either a hand-sprayer or a backpack sprayer. Any re-growth on old stumps

that is observed may be treated by either method. The preferred method and herbicide (mix) will be determined during the three-year intensive tamarisk removal period.

Task 3) Monitoring visits to local revegetation plots that were planted with local native species will be conducted annually for the first five years to determine success or failure of the plantings. These visits may be continued an annual basis or as needed to detect changes during the 25 year term of the agreement.

Task 4) A short management report (one page) shall be prepared annually for the first five years of the management agreement period. This report will summarize the results of tamarisk monitoring and management, and revegetation plot monitoring for the current year and will be sent to WCB no later than June 30<sup>th</sup> of each year. The WCB may request additional reports at multi-year intervals for the remainder of the contract period.